

REMARKS

In the October 24, 2006 Office Action, claims 1-16 were rejected as being indefinite and in view of prior art. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

Applicants have amended claims 1, 3, 5, and 9 and cancelled claims 2, 7, 10, and 15 as indicated above. Thus, claims 1, 3-6, 8-9, 11-14 and 16 are pending, with claims 1 and 9 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

Rejections - 35 U.S.C. § 112, second paragraph

Claims 1-16 were rejected under 35 USC 112, second paragraph, as being indefinite, because there was no antecedent basis for the terms "the portion" and "the next packaged bag", and because the recitation in claims 1 and 9 regarding the timing at which mixing takes place was unclear. However, Applicants respectfully submit that this rejection has been overcome, because the offending language has been deleted from independent claims 1 and 9.

Rejections - 35 U.S.C. § 102

Claims 1, 9 and 11 stand rejected under 35 U.S.C. §102(e) as being anticipated under 35 USC 102(e) by U.S. Patent No. 6,904,737 to Engesser. In addition, claims 1, 9 and 11 stand rejected as being anticipated under 35 USC 102(b) by U.S. Patent No. 4,769,974 to Davis. Furthermore, claims 1, 3, 5, 9, 11 and 13 stand rejected as being anticipated under 35 USC 102(b) by U.S. Patent No. 3,719,021 to Rosenberg.

Applicants have amended independent claims 1 and 9 to more clearly define the present invention over the prior art of record. In particular, independent claim 1 has been amended with the elements of canceled claims 2 and 7, and independent claim 9 has been amended with the elements of cancelled claims 10 and 15. Furthermore, independent claims 1 and 9 have been amended to recite that the powdered seasoning and the packaging material

are electrically charged with the same polarity. Support for these amendments can be found on page 13, lines 28-29 and page 14, lines 1-7.

Applicants respectfully submit that the prior art of record fails to disclose or suggest an electrical charging apparatus connected to a high voltage power supply that forms an electric field between a pair of sealing jaws, and electrically charges tubular shaped packaging material with a prescribed polarity such that powdered seasoning supplied to articles to be packaged and the packaging material are electrically charged with the same polarity. As can be seen on pages 13 and 14 of the present specification, this feature makes it possible to prevent powdered seasoning from getting caught in the transverse seal part of the packaging material.

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicants respectfully submit that independent claims 1 and 9, as now amended, are not anticipated by the prior art of record. Withdrawal of this rejection is respectfully requested.

Moreover, Applicants believe that dependent claims 3, 5, 11, 13 are also allowable over the prior art of record in that they depend from independent claims 1 or 9, and therefore are allowable for the reasons stated above. Also, the dependent claims are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not anticipate independent claims 1 and 9, neither does the prior art anticipate the dependent claims.

Applicants respectfully request withdrawal of these rejections.

Rejections - 35 U.S.C. § 103

Claims 2, 6-8, 10 and 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Engesser or Davis patents in view of the Rosenberg patent. In addition, claims 4 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the

Engesser or Davis patents in view of U.S. Patent No. 3,912,535 to Rauser. Furthermore, claims 3, 5, 11 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Engesser or Davis patents in view of the Rosenberg patent.

Regarding the use of Official Notice in rejecting claims 2, 6-8, 10, and 14-16, the Examiner states that that:

"...the examiner considers these features well known and took Official Notice of the above elements. In view of these assertions made by the Examiner in the last Office action and Applicants silence regarding them, these features are considered as an admission of prior art".

Applicants respectfully disagree with this assertion. Applicants are unaware of any statute or case law that states that the failure of an applicant to respond to the assertion of Official Notice by an examiner in a previous office action constitutes an admission of prior art. Unless the Examiner can provide support for such an assertion, Applicants respectfully request that such assertion be retracted.

Furthermore, Applicants respectfully direct the Examiner's attention to MPEP 2144.03, which states that "it would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known". Applicants respectfully assert that the recitation of claims 2, 6-8, 10, and 14-16 is not capable of instant and unquestionable demonstration as being well-known, and thus the use of Official Notice by the Examiner to reject these claims is improper. Applicants therefore respectfully request that the Examiner's assertions regarding these claims be supported with a citation to one or more prior art references, and if the Examiner is unable to do so, that the rejection of these claims be retracted.

Moreover, Applicants respectfully assert that the rejection of claims 7 and 15 is also improper because the Examiner failed to properly consider these claims. In rejecting claims 7 and 15 by using Official Notice, the Examiner states that the use of "continuous filling mechanisms" are well known in the art. However, claims 7 and 15 recite the use of a second electrical charging means that forms an electric field between the pair of sealing jaws and that electrically charges the packaging material with a prescribed polarity. Applicants fail to see how this relates to a "continuous filling mechanism", and suggest that the Examiner may have misread these claims. Reconsideration of these claims is respectfully requested.

Despite the foregoing, as noted above, Applicants believe that the dependent claims are allowable over the prior art of record in that they depend from independent claims 1 and 9, respectively, and therefore are allowable for the reasons stated above.

Therefore, Applicants respectfully request that this rejection be withdrawn in view of the above comments and amendments.

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In view of the foregoing amendment and comments, Applicants respectfully assert that the currently pending claims are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

/Steven Roberts/

Steven Roberts
Attorney of Record
Reg. No. 39,346

Shinju Global IP
c/o GLOBAL IP COUNSELORS, LLP
1233 Twentieth Street, NW, Suite 700
Washington, D.C. 20036
(202)-293-0444